FILE COPY

IN THE

Supreme Court of the United States

October Term, 1973

NO. 73-1488

In the Matter of the January, 1972, Grand Jury,
SAMUEL M. BERK,

Petitioner,

vs.

UNITED STATES OF AMERICA and BERNARD C. CAREY, States Attorney of Cook County, Illinois,

Respondents.

In the Matter of the December, 1971, Grand Jury,
RALPH SERPICO,

Petitioner,

vs.

UNITED STATES OF AMERICA and BERNARD C. CAREY, States Attorney of Cook County, Illinois,

Respondents.

(On Petition For a Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit)

RESPONDENT'S BRIEF IN OPPOSITION

BERNARD CAREY,
States Attorney of Cook County, Illinois,
500 Richard Ogle Center,
Chicago, Illinois 60602,
(312) 443-5476,

Attorney for Respondent.

Seymour Gardner,
Chief of the Civil Division,

Paul E. Bauer, Jr.,
Richard B. Wertheimer,
John A. Dwyer, III,
Assistant States Attorneys,

Of Counsel.

TABLE OF CONTENTS

	Page
Issue Presented for Review	2
Statement of the Facts	2
Argument	4

Authorities Cited

Cases:

ABC Great Stores, Inc. v. *Globe Ticket Co.*, 309 F. Supp. 181 U.S.D.C. Pa. (1970-	4
Allis-Chalmers Mfg. Co. v. *City of Fort Pierce, Fla.*, 323 F. 2d 233 (5th Cir., 1963)	5
Atlantic City Electric Co v. *A. B. Chance Co.*, 313 F. 2d 431 (2nd Cir., 1963)	5
Dennis v. *United States*, 384 U.S. 855 (1966)	9
Doe v. *Rosenberry*, 255 F. 2d 118 (2nd Cir., 1958)	5
In Re April 1956 Grand Jury, 239 F. 2d 263 (7th Cir., 1956)	6
In Re Grand Jury Proceedings, 309 F. 2d 440 (3rd Cir., 1962)	4
In Re Holovachka, 317 F. 2d 834 (7th Cir., 1963)	6
In Re William H. Pfaummer & Sons, Inc., 53 F. R. D. 464, U.S.D.C.E.D., Pa. (1971)	8
Pittsburg-Plate Glass Co. v. *United States*, 360 U.S. 395 (1959)	4
United States v. *Proctor & Gamble Co.*, 356 U.S. 677 (1958)	9
United States v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940)	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1243

In the Matter of the January, 1972, Grand Jury, SAMUEL M. BRIN,

Petitioner,

VS.

UNITED STATES OF AMERICA and BERNARD C. CAREY, States Attorney of Cook County, Illinois,

Respondents,

In the Matter of the December, 1971, Grand Jury, RALPH SERPICO,

Petitioner,

VS.

UNITED STATES OF AMERICA and BERNARD C. CAREY, States Attorney of Cook County, Illinois,

Respondents.

(On Petition For a Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit)

RESPONDENT'S BRIEF IN OPPOSITION

ISSUE PRESENTED FOR REVIEW

1. Whether the District Court abused its discretion by ordering production of Federal Grand Jury minutes to the State's Attorney of Cook County pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure?

STATEMENT OF FACTS

Petitioners' statement of the case implies that the State's Attorney of Cook County entered into a clandestine effort to procure the grand jury minutes relating to the indictments of the Petitioners. Such an erroneous statement requires Respondent to present an accurate statement of facts.

Samuel Brin (December 8, 1972) and Ralph Serpico (April 17, 1973) pleaded guilty to utilizing interstate facilities in violation of the bribery laws of the State of Illinois. On May 4, 1973, and May 8, 1973, the State's Attorney of Cook County filed lawsuits against Serpico and Brin in the Circuit Court of Cook County. These pending actions seek to recoup the money, received by Petitioners as bribes, for the use of the people of Cook County.

On May 9, 1973, Respondent sent notice to the Honorable James Thompson, United States Attorney for the Northern District of Illinois, that he would appear before the Chief Judge on May 17, 1973 to request the production of the relevant grand jury minutes. Prior to the Chief Judge's decision, both Petitioners were given the opportunity to file briefs.

The United States Attorney's office did not object to the State's Attorney's request and did not file a brief before the Chief Judge.

Therefore, Petitioners, though not receiving formal notice of Respondent's motion, were represented in all proceedings before the Chief Judge and participated fully in the arguments before the trial court.

ARGUMENT

I.

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ORDERING PRODUCTION OF THE GRAND JURY MINUTES TO THE STATE'S ATTORNEY OF COOK COUNTY.

The disclosure of grand jury minutes under Rule 6 (e) of the Federal Rules of Criminal Procedure is within the Court's discretion. Justice Clark, speaking for the Supreme Court, declared that ". . . the federal trial courts as well as the Courts of Appeals have been nearly unanimous in regarding disclosure as committed to the discretion of the trial judge. Our cases announce the same principle, and Rule 6 (e) is but declaratory of it." *Pittsburgh Plate Glass Company* v. *United States,* 360 U.S. 395, 399 (1959); *ABC Great Stores, Inc.* v. *Globe Ticket Co.*, 309 F. Supp. 181, U.S.C.D. Pa., (1970).

Moreover, the action of the trial judge on such a petition or motion may not be disturbed absent a clear abuse of discretion. *In Re Grand Jury Proceedings,* 309 F. 2d 440, 444 (3rd Cir., 1962).

A.

"Judicial Proceedings" Under Rule 6 (e) Include State Civil Proceedings.

The State's Attorney has filed lawsuits in the Chancery Division of the Circuit Court of Cook County against both Serpico and Brin. These cases seek to recover moneys wrongfully and illegally received by Petitioners as bribes for wrongfully assessing property in their duties

as Deputy Cook County Assessors. It is clear that state cases are within the purview of Rule 6(e).

In *Allis-Chalmers Mfg. Co.* v. *City of Fort Pierce, Florida*, 323 F. 2d 233 (5th Cir., 1963), a civil action for damages for violation of the antitrust laws, the Court disclosed grand jury minutes during a deposition. That Court said:

> "Rule 6 (e) of the Rules of Criminal Procedure provides for disclosure upon discretion of the court 'preliminary to or in connection with a judicial proceeding.' Although appellants suggest that this Rule is not applicable to private civil litigation, the language is certainly broad enough to cover such litigation." (at 241).

The Second Circuit has consistently held that "judicial proceedings" include civil cases. In *Doe* v. *Rosenberry*, 255 F. 2d 118 (2nd Cir., 1958), the New York Bar Association sought grand jury testimony for disbarment proceedings. The defendant had *not* been indicted by the grand jury, however, the Court still disclosed the testimony. In its considered analysis of Rule 6 (e), the Court held:

> ". . . that, prima facie, the term 'judicial proceedings' includes any proceedings determinable by a court, having for its object the compliance of any person, subject to judicial control, with standards imposed upon his conduct in the public interest, even though such compliance is enforced without the procedure applicable to the punishment of crime. An interpretation that should not go at least so far, would not only be in the teeth of the language employed, but would defeat any rational purpose that can be imputed to the Rule." (at p. 120).

See also: *Atlantic City Electric Co.* .. *A. B. Chance Co.*, 313 F. 2d 431 (2nd Cir., 1963).

Both Petitioners were Cook County officers, and as such owed a fiduciary duty to the residents of Cook County. By wrongfully and illegally assessing properties and receiving bribes therefor, they breached their fiduciary duty. The State's Attorney, as the Bar Association in the *Doe* case (supra), seeks to force compliance of the standards of conduct of these County officers in the public interest.

B.

There Is A Compelling Need For Disclosure Of The Grand Jury Minutes.

Petitioners cite two cases in support of their opposition to the disclosure of the grand jury minutes. The most recent case, *In Re Holovachka,* 317 F. 2d 834 (7th Cir., 1963), dealt with the attempt of the Attorney General of Indiana to obtain grand jury testimony to begin the disbarment proceedings of the defendant. The Court denied the disclosure primarily because there had been a very well-publicized trial where the defendant was found guilty by a jury. The Seventh Circuit refused to invade the grand jury when all the desired information was disclosed at a public trial.

The second case is *In Re April 1956 Grand Jury,* 239 F. 2d 263 (7th Cir., 1956). In that case the Court refused to give the government the grand jury minutes because of what it termed "improper motives" of the government. The Court denounced the harrassment to which the government subjected the defendant.

Petitioners' situations are clearly distinguishable from these cases, as they are from most of the cases pertaining to Rule 6 (e). Both Serpico and Brin were indicted for

income tax evasion and using interstate mails to violate the Illinois bribery laws. Both men pleaded guilty to certain counts, consequently there was no trial and no evidence presented publicly.

These are essential distinctions, for there is no alternative method by which the State's Attorney of Cook County can obtain the information on which to base civil lawsuits against the Petitioners. Indeed, the Court of Appeals endorsed this position. (Petition, App. 2). It was only through the collective agencies of the United States government that the criminal acts of Serpico and Brin were established. No state or local governmental body has the resources for such investigations, and the pleas of guilty negated public disclosure at trial.

Petitioners attempt to minimize the compelling need for disclosure by advising this Court that the only purpose of the minutes is for discovery and impeachment. However, the state lawsuits are almost totally dependent on the information to be gleaned from the minutes. Without the information contained therein, Petitioners will be able to retain the gains from a crime arising out of their breach of their public trust, a result inimical to the purpose of Rule 6 (e).

C.

The Ends Of Justice Require Disclosure Of The Grand Jury Minutes.

Petitioners demand that the secrecy of the grand jury be maintained without understanding the reasons for that secrecy. Judge Edward R. Becker of the District Court of Pennsylvania, Eastern Division, analyzed these reasons in a recent decision concerning Rule 6 (e).

In *In Re William H. Pflaummer & Sons, Inc.*, 53 F.R.D. 464 (1971), Judge Becker enumerated the reasons for grand jury secrecy: (1) to prevent the escape of those to be indicted; (2) to prevent any pressure on the grand jurors; (3) to prevent tampering with the witnesses; (4) to encourage free disclosures by those testifying; (5) to protect the innocent who are not subsequently indicted (at 469-470). And even where these reasons exist, ". . . . courts will, in the exercise of their discretion, permit disclosure if the party seeking it can show that there is a compelling need for the material and such disclosure is required by the ends of justice." (at 470).

These five reasons do not exist in the Serpico or Brin cases. The indicted men have pleaded guilty, the grand jury has been discharged, the witnesses are finished testifying, and any innocent parties are not the subject of the instant proceedings. As this Court said in *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940), ". . . after the grand jury's functions are ended, disclosure is wholly proper where the ends of justice require it." (at p. 234).

That the ends of justice require disclosure is patently evident. Petitioners, as County officers and fiduciaries, betrayed their public trust. By accepting bribes and lowering tax assessments, they wrongfully put money into their own pockets while cheating the residents of Cook County out of tax dollars. Justice demands that these bribes, totalling approximately $160,000.00, be paid into the Cook County treasury to prevent injury to the County and unjust enrichment of Serpico and Brin. This disclosure and the limits thereon established by the District Court certainly fall within the standards enunciated by

the Supreme Court in *Dennis* v. *United States*, 384 U.S. 855 (1966) and *United States* v. *Proctor and Gamble Co.*, 356 U.S. 677 (1958).

It must also be noted that the United States Attorney does not object to this disclosure. This Court can take judicial notice of the numerous official corruption indictments and convictions obtained by the United States Attorney for the Northern District of Illinois. Yet, he obviously does not believe that the sanctity or effectiveness of the grand jury will be harmed or limited by the instant disclosure.

CONCLUSION

Based upon the foregoing, Respondent, Bernard Carey, State's Attorney of Cook County, Illinois, respectfully requests that the petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit be denied.

Respectfully submitted,

BERNARD CAREY,
State's Attorney of Cook County, Illinois,
500 Chicago Civic Center,
Chicago, Illinois 60602,
(312) 443-8760,

Attorney for Respondent.

SHELDON GARDNER,
Chief of the Civil Division.
PAUL P. BIEBEL, JR.,
FREDRIC B. WEINSTEIN,
JOHN A. DIENNER, III,
Assistant State's Attorneys,
Of Counsel.